

Green Mountain State Now Even More Green: Vermont Legalizes Recreational Marijuana, Provides Protections for Employers

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Beginning in the summer of 2018, Vermont residents will be able to legally possess and use recreational marijuana, under a new law passed in January of 2018. Vermont is the ninth state (in addition to Washington, D.C.) to legalize the recreational use of marijuana, but became the first state to legalize it through the legislative process, rather than a voter-approved ballot referendum. Vermont's new recreational marijuana law will have implications for companies with employees in the Green Mountain State.

Background

The Vermont legislature introduced [the recreational marijuana bill](#) because the state has no mechanism for citizen ballot initiatives or referendums—the method by which other states had legalized recreational marijuana. After vetoing a similar measure last year, Republican Governor Phil Scott signed the law on January 22, 2018, after the Democrat-controlled legislature passed the bill with some revisions.

The law will take effect on July 1, 2018, and legalizes the possession and use by adults 21 and older of up to one ounce of marijuana, as well as the cultivation of a limited number of plants. The law prohibits marijuana use in any public place, which includes streets, parks, sidewalks, public buildings, and other places of public accommodation. In addition, the law allows landlords (commercial or residential) to ban the possession or use of marijuana on the premises as part of a lease agreement. Importantly, the new law does not establish any framework for retail sale, so Vermont's legalization may not result in any immediate widespread increase in the availability or use of marijuana.

Implications for Employers

The legislature expressly addressed some employment issues arising from the new law, and Vermont employers have been provided some protections to regulate their workplaces. Specifically, the statute affirms that nothing in the new law will:

(1) “require an employer to permit or accommodate the use, consumption, possession, transfer,

display, transportation, sale, or growing of marijuana in the workplace;

- (2) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace;
- (3) create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or
- (4) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises."

Because the statute does not prohibit a company from "adopting a policy that prohibits the use of marijuana in the workplace," Vermont employers may continue to implement and enforce employment policies regarding marijuana in the workplace. And if an employee is found to be in violation of such a policy, the new law makes clear that no cause of action arises under the statute if the employee was fired "for violating a policy that restricts or prohibits the use of marijuana by employees."

While these protections are important, a company's latitude in determining whether an employee is violating such a policy is constrained by Vermont's [stringent restrictions on drug testing](#), which generally require probable cause to test any current employee and prohibit random testing except in limited circumstances. However, employers in Vermont may continue to administer pre-employment drug tests if the applicant has been given an offer conditioned upon receipt of a negative test, and the language of the statute seemingly encompasses the common scenario of rescinding a job offer for a failed drug test.

Takeaways

Vermont has joined a growing list of states that allow the recreational use of marijuana. Marijuana legalization efforts at the state level are expected to continue in 2018, with both New Jersey and Rhode Island expected to consider permitting recreational marijuana. Indeed, New Jersey may follow closely behind as the second state to approve recreational marijuana through the legislature, as the new governor campaigned on the issue. And Massachusetts is readying for retail sales of marijuana on July 1, 2018—the date the new law in Vermont will take effect. While states are rapidly passing new laws, there will continue to be disharmony with federal laws, as U.S. Attorney General Jeff Sessions is against marijuana legalization and last month [rescinded an Obama-era policy](#) deferring to state policy for prosecution. What is clear is that the issue of marijuana in the workplace is not a passing fad, and employers should review their policies and keep apprised of new developments, in order to remain flexible and adjust to the rapidly changing laws.

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